STATE OF MICHIGAN

COURT OF APPEALS

CHARLES F. CONCES,

Plaintiff-Appellant,

and

MARY E. CONCES,

Plaintiff,

V

ANNE B. NORLANDER, PETER HERLOFSKY, RONALD IVEY, MICHAEL NOFS, KURT RHODE, BARBARA FREDERICK, DAVID MANGE, MARVIN AUSTIN, GEORGE PERRETT, SUSAN K. MLADENOFF, LAURIE SCHMIDT, OFFICE OF THE REGISTER OF DEEDS, CALHOUN COUNTY, and OTHER UNNAMED RESPONSIBLE OFFICIALS,

Defendants-Appellees.

UNPUBLISHED
October 16, 2001

No. 224157
Calhoun Circuit Court
LC No. 99-002834-NZ

Before: K. F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of all defendants pursuant to MCR 2.116(C)(7) on the ground of governmental immunity. We affirm.

We review de novo a trial court's grant of summary disposition pursuant to MCR 2.116(C)(7) to determine whether the defendant is entitled to judgment as a matter of law. *O'Connell v Kellogg Community College*, 244 Mich App 723, 725; 625 NW2d 126 (2001). "[T]he exceptions to a governmental entity's immunity from tort liability when performing a governmental function are narrowly drawn." *Id.*

As an initial matter, we recognize that the tax lien instrument as filed did not comply with the statutory requirements of MCL 211.664 (requiring certification of the lien) and MCL 211.665

(requiring the address of the person certifying the lien). However, we conclude that notwithstanding these deficiencies, the doctrine of governmental immunity applies and summary disposition was properly granted on that basis.

The general rule is that a "governmental agency is immune from tort liability if it is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). Employees of governmental agencies are similarly immune. MCL 691.1407(2) provides in pertinent part:

> Each . . . employee of a governmental agency . . . shall be immune from tort liability for injuries to persons or damages to property caused by the . . . employee . . . while in the course of employment . . . while acting on behalf of a governmental agency if all of the following are met:
>
> (a) The . . . employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The . . . employee's . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. [MCL 691.1407(2).]

See *Robinson v City of Detroit*, 462 Mich 439, 458; 613 NW2d 307 (2000).

Defendant Anne B. Norlander, the Register of Deeds of Calhoun County, is an elected official. Const 1963, art 7, § 4. As such, she is immune from suit pursuant to MCL 691.1407(5) for all actions that fall within the scope of "her judicial, legislative, or executive authority." Because the nature of her job is to determine what instruments concerning real property are to be accepted for registration, MCL 565.201 *et seq.*, the decision whether to register a federal tax lien is clearly within the scope of her authority. In filing a federal tax lien, the register of deeds is engaged in the exercise or discharge of a governmental function. Finally, plaintiff does not allege facts to support a finding of gross negligence. See MCR 2.116(C)(8).

We note that the complaint actually names defendant Norlander as a defendant twice, once under her name, and once as "Office of the Register of Deeds, Calhoun County."[1] To the extent that there is any significance to the redundancy, the principles of governmental immunity bar the suit against the register of deeds, however she is designated.

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[1] It is unclear from the way defendants are designated in the caption whether the reference is to the "Office of Register of Deeds, Calhoun County" as a single defendant, or to both the office and the county as separate defendants. In the body of the complaint, the reference is to "Defendant Calhoun County Register of Deeds Office," so we assume this is what is meant.

Plaintiff indicated in his attempted "amendment to complaint" that he did not regard the members of the Calhoun County Board of Commissioners (defendants Ronald Ivey, Michael Nofs, Kurt Rhode, Barbara Frederick, David Mange, Marvin Austin, and George Perrett) or the prosecuting attorney and assistant prosecuting attorney (defendants Susan K. Mladenoff and Laurie Schmidt respectively) to be defendants in the action "at present." The trial court presumed on this basis that plaintiff was abandoning his claims against these defendants, and we draw the same conclusion. Additionally, any action against the commissioners is barred because they are elected officials, MCL 46.409, and therefore are immune from suit for action within the scope of their duties under MCL 691.1407(5). Because the prosecuting attorney is also an elected official, Const 1963, art 7, § 4, suit against her is barred on the same grounds.

Plaintiff also stated in his amendments to his complaint that defendant Peter Herlofsky is "not at present" a defendant. Further, plaintiff cites no support for the proposition that either he or any other Calhoun County official had authority to supervise the functions of the register of deeds, an independent elected official whose duties are set by state statute and not by ordinance of the county. See MCL 565.201; *Thomas v Wayne Co Bd of Supervisors*, 214 Mich 72, 88-89; 182 NW 417 (1921). In any event, in his position as Calhoun County Administrator, Herlofsky has immunity from suit for activities within the scope of his executive authority.

With regard to Calhoun County as a separate defendant, there is no indication in the body of the complaint that the county was to be made a defendant in this action. The reference to the county in the caption appears to be simply a geographical designation for the "Office of the Register of Deeds," indicating which register of deeds is being sued. The record, moreover, indicates that whereas service of process was made on "Register of Deeds Office, Calhoun County," service was never effected on Calhoun County. Nor is this merely a case of a defendant who was not served, but who voluntarily submitted to the court's jurisdiction, as there is nothing to indicate that Calhoun County itself is a defendant at all. In any event, we note that there are no allegations in the complaint of any wrongdoing on the part of Calhoun County as a legal entity. Accordingly, even assuming that Calhoun County is a defendant, summary disposition is proper pursuant to MCR 2.116(C)(8).

Plaintiff has also alleged violation of his right to due process in the filing of the notice of tax lien, and has asked for injunctive relief. We find no violation of due process. As the United States Supreme Court has held, due process is a flexible concept, and although some type of hearing is required before a final deprivation of a property interest, there is not necessarily a right to a hearing before every stage of proceedings involving the retention of a property interest. *Mathews v Eldridge*, 424 US 319, 333-335; 96 S Ct 893; 47 L Ed 2d 18, 32-33 (1976). There is no right to a hearing before the filing of a notice of tax lien; indeed, there is no right to a hearing before the much more serious step of an actual levy to satisfy tax liability. See *Burroughs v Wallingford*, 780 F2d 502, 503 (CA 5, 1986). A violation of state law does not violate due

process in the absence of violation of a constitutional right. *Black v Parke*, 4 F3d 442, 448 (CA 6, 1993). Given that plaintiff had no constitutional right to a determination whether the notice of levy was proper before it was filed, he has no claim for violation of due process.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Michael J. Talbot